COURT NO. 10

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 23 of 2006

United India Insurance Company Ltd.
Through its Divisional Manager,
Divisional Office Nainital Road, Tikonia,
Haldwani, District Nainital.

… Appellant.

Versus

1. Smt. Parvati Devi wife of Shri Dharmanand Dwivedi,
2. Dharmanand Dwivedi S/O Shri Tara Dutt Dwivedi,
   Both residents of village Bamangaon, Post Office Qwiti,
   Tehsil Munsyari, District Pithoragarh. (Claimants)
3. Shri Kalyan Singh Rana, S/O Gopal Singh Rana,
   Resident of village Manjkot, Tehsil Munsyari,
   District Pithoragarh. (Owner of Vehicle No. UA 05/960)

…. Respondents.

Sri Pankaj Purohit, learned counsel for the petitioner.
Sri G.B.Pande, Adv. learned counsel for the claimant-respondents.

With

Cross Objection No. 3762 of 2006

Smt. Parwati Devi W/O Sri Dharmanand Dwivedi and another

… Claimant-respondents

Date April 03, 2006

PC: Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (***in short the Act***) against the judgment and award, dated 24-10-2005, passed by the Motor Accidents Claims Tribunal/District Judge, Pithoragarh (***in short the Tribunal***), in M.A.C. Case No. 88 of 2003, Smt. Parwati Devi and others Vs. Kalyan Singh and another, whereby the learned Tribunal has allowed the claim petition and decreed the claim for compensation of Rs. 1,17,000/-. The learned Tribunal has also put

a rider of interest in case the payment of compensation is not made within a period of two months by the Insurance Company, it shall be liable to pay interest @ 7% per annum from the date of application till payment. Aggrieved, the Insurance Company-appellant has come up in appeal. On the other hand, the claimant-respondents have filed cross-objection for enhancement of the compensation amount, which shall be dealt with in the later part of the judgment.

Brief facts of the case are that deceased Umesh Chandra lost his life on 20-9-2003 in a motor vehicle accident involving Jeep No. UA 05/960 due to rash and negligent driving by its driver. According to the petitioners, Umesh Chandra (son of the claimants) started his journey from Qwiti toThal by the ill-fated Jeep at about 9 a.m. As soon as the said jeep reached near Kakarsem bend, it went off the road and rolled down in to Jakula river with the result Umesh Chandra sustained grievous injuries and considering his critical condition he was taken to Primary Health Centre Tejam and kthen to Pithoragarh District Hospital, where in the course of treatment, he died. The Post Mortem of othe dead body was conducted the same day. The deceased was aged 20 years and was an expert in gardening and growing of herbal plants and he was earning Rs. 5000/- per month. The deceased used to give Rs. 3000/- for his domestic expenses. It is alleged that the ill-fated Jeep was owned by Kalyan Singh Rana and it was duly insured with the petitioner. The claimants have claimed Rs. 6,78,000/- as compensation along with interest @ 15% per annum from the opposite parties.

The owner of the vehicle filed his written statement and denied the allegations made in the claim petition for want of knowledge. It was admitted that on the fateful day, his jeep met with an accident, but the driver was not at fault, rather the accident took place due to bad condition of road at the place of accident. The driver was having a valid driving licence and all necessary

papers. The insurance of the vehicle has been admitted and it has been stated that the liability, if any, to pay compensation lay upon the insurer.

The Insurance Company-petitioner also filed his written statement and denied the allegations made in the claim petition. It has been stated that the quantum of compensation is excessive and the owner of the vehicle was not having valid papers of the vehicle and the jeep was being driven in violation of traffic rules and against the policy conditions.

The learned Tribunal framed as many as four issues in the case. Issue No.1 related to rash and negligent driving by the driver of the jeep in question. Issue No.2 related to valid papers of the vehicle at the time of accident. Issue No.3 related to holding of valid driving licence by the driver of the Jeep and Issue no. 4 related to relief.

The claimants have field F.I.R. of the incident, Post Mortem Report etc. in documentary evidence and have examined Dharmanand Dwivedi as P.W.1 and Gokulanand as P.W. 2. O.P.No.1 owner has examined himself as D.W.1 and has field permit of the vehicle, copy of insurance cover-note, copy of Form No. 34, registration certificate, certificate of payment of additional tax, etc. The Insurance Company-petitioner has examined D.W. 2 C.S.Koranga and D.W.3 Vinod Kumar Sanguri and field investigation report of the surveyor and other documents.

After considering the entire evidence on record, the Tribunal found on Issue No.1 that the accident in question was the result of rash and negligent driving by the driver of the ill-fated Jeep thereby the deceased sustained grievous injuries and consequently died in the course of his treatment. The learned Tribunal took up Issue Nos. 2 and 3 together. On Issue nos. 2 and 3, which have been framed on the pleadings of the insurer-

appellant, it has been held on the basis of the evidence before the Tribunal that the driver of the vehicle was holding a valid driving licence and the vehicle was duly insured with the appellant-insurance company and it was observed that the insurer failed to lead any evidence to show that the driver was not having valid driving licence and valid papers of the vehicle. On Issue No.4, the learned Tribunal has found deceased Umesh Chandra was the son of the claimants, who was unmarried at the time of his accidental death. The age of the mother has been mentioned to be 50 years and that of the father 52 years. Taking into consideration the age of the mother, multiplier of 11 was fixed for computing the compensation amount. The learned Tribunal further held that the deceased was unemployed, therefore, as per provisions of Second Schedule of Section 163-A of the Act, the income was held to be Rs. 15,000/- per annum and after deducting 1/3rd from it, it was held that the loss of dependency was Rs. 10,000/- per annum and accordingly, compensation was assessed at Rs. 1,10,000/-. In addition, amounts of Rs. 2,000/- towards funeral expenses and Rs. 5,000/- towards loss of consortium were awarded. Ultimately, the claim petition was decreed for Rs. 1,17,000/- in favour of the claimants and against the insurance company.

I have heard learned counsel for the parties and have thoroughly gone through the entire material on record including the lower court record.

The main ground of challenge raised in this appeal by the appellant is that the driver of the ill-fated Jeep was not having a valid driving licence. The learned Tribunal has dealt with the point of driving licence at pages 4 and 5 of its judgment. It comes out on the basis of the evidence led by the petitioner-insurance company that the Insurance has failed to show that the driver Ranjeet Singh, who is said to be driving the ill-fated jeep, was not having a valid driving licence. It was open to the insurance company to examine some responsible person of the Regional Transport Office

Haldwani, who could be the best witness to depose that the driver Ranjeet Singh was not having a valid driving licence. But it has not been done. It is interesting to note that D.W.2 C.S.Koranga, who is the witness of the petitioner and who prepared the survey report, could not dare say that the driver was not having a valid driving licence. On the other hand, the learned Tribunal on the basis of record found that the driver was having valid driving licence to drive light motor vehicle, motor vehicles and heavy goods for the period 24-4-2003 to 24.4.2006. Moreover, the Apex Court has held in paragraph 110(iii) of the judgment in the case of ***National Insurance Co. Ltd. Vs. Swaran Singh*** reported in [(2004) 3 Supreme Court Cases, 297], as under:-

> ***"The breach of policy condition, e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."***

Taking into consideration, the view of the Apex Court, I find that the petitioner has failed to discharge its burden. Moreover, the surveyor's report 27-C filed by the Insurance Company, at point no.3 of the result, it was mentioned that all the documents of the vehicle were legal and complete. Having considered all the aspect of the matter from all the four corners, I am not inclined to accept that the finding recorded by the learned

Tribunal that the driver was having a valid driving licence is in any way illegal or erroneous.

No other point was urged or argued before me in this appeal.

So far as the cross-objection filed by the claimant-respondents is concerned, they have prayed for enhancing the compensation amount by stating that the income of the deceased was Rs. 5,000/- per month. The claimants have not filed any affidavit in support of their contention raised in the cross-objection and have not led any evidence in support thereof. In his testimony, P.W.1 Dharma Nand has stated that his son used to earned Rs. 5,000/- per month from gardening and by growing herbs. The claimants have totally failed to bring on record any such evidence, which could indicate that the deceased was doing self-employment. The learned Tribunal has rightly discarded the contention of the claimants that the deceased was an earning member. I am not inclined to accept that the deceased Umesh Chandra was having independent source of income. Even if it may be presumed that the deceased was engaged in the work of gardening and growing of herbs, the income derived there-from is not at all affected. The father of the deceased P.W.1 has not said as to how the income from the said business has now ceased. It is but natural that in case any person is doing private business, there must be some document indicative of such business, or profession. In my view, the learned Tribunal has rightly taken the aid of Second Schedule of Section 163-A of the Act while computing the income of the deceased. Taking into consideration the entire material on the point of loss of dependency, I find that the compensation awarded by the Tribunal is just and proper. There is no merit in the cross-objection filed by the claimant-respondents.

In the result, the appeal as well as cross-objection has no force and deserves to be dismissed.

The appeal is dismissed. Cross-objection filed by the claimant-respondent is also dismissed. The impugned award dated 24-10-2005 is upheld. No order as to costs.

The amount in deposit with this Court, if any, be remitted to the Motor Accident Claims Tribunal Pithoragarh for being paid to the claimants.

(B.S. Verma, J.)

RCP